



CITY OF HOUSTON

INVITATION TO BID

Issued: March 31, 2006

Bid Opening:

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until 10:30 a.m. **Thursday, April 20, 2006** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 a.m. on that date for the purchase of:

FUEL, TEXAS LOW EMISSION DIESEL & REFORMULATED GASOLINE

FOR

VARIOUS DEPARTMENTS

BID INVITATION No. SC-6-9130-024-21066

Buyer:

Questions regarding this solicitation document should be addressed to Tom Smyer, Procurement Specialist, at **(713) 247-1257**, or e-mail to thomas.smyer@cityofhouston.net

Pre-Bid Conference:

A Pre-Bid Conference will be held for all Prospective Bidders in the Strategic Purchasing Division, Concourse Level (Basement), Conference Room #2, City Hall, 901 Bagby, at 10:00 a.m. on Monday, April 10, 2006.

All Prospective Bidders are urged to be present. It is the bidder's responsibility to ensure that they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference. Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at www.houstontx.gov/purchasing. By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to all registered bidders. This information may also be obtained from the Supplier Assistance Desk, Strategic Purchasing Division, 901 Bagby, Concourse Level, Houston, Texas 77002.

The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3.

The City reserves the right to reject any or all bids, or to accept any bid or combination of bids deemed advantageous to it.

City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15 - 1.

***CONTENTS:**

SECTION A: OFFICIAL BID FORM

SECTION B: SCOPE OF WORK/SPECIFICATIONS

SECTION C: GENERAL TERMS & CONDITIONS

***NOTE 1: Actual page numbers for each Section may change when the solicitation document is downloaded from the Internet or because of Letters of Clarification. Therefore, Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.**

***NOTE 2: To be considered for award, please submit all pages from Section A (OFFICIAL BID FORM), including the Official Signature Page, which must be signed by a company official authorized to bind the company.**

INSTRUCTIONS for BIDDING and TERMS & CONDITIONS

NOTE: It is the policy of the City of Houston that a sealed, signed bid must be submitted to the City Secretary by the due date. After you submit your bid online, please print and sign and turn it in to the City Secretary.

1. All bids must show the full name of the firm bidding and must be on forms furnished by the Purchasing Section of the Strategic Purchasing Division, Finance and Administration Department, and must be written in ink or typed. Pencil quotations will not be considered. Bids should be filed in duplicate and at least one copy of the Bid Form must be manually signed in ink by an authorized officer of the company and title must be shown. Obligations assumed by the signature must be fulfilled. The bid number, title of the bid, and the bid due date must be shown on the front of the envelope(s) containing the Bid Form(s).
2. **TIME AND DATE:** Bids **MUST** be in the Office of City Secretary, City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002 at or before 10:30 A.M. on the day bids are due; an early postmark will not suffice. Be sure you have allowed ample time for postal delivery. **CAUTION:** Bids mailed on the day before bids are due may not be received in time to be considered.
3. **WITHDRAWAL OF BID OFFER:** If the bid has been submitted to the City Secretary, a bidder may withdraw its offer before the expiration of the time during which the offer may be submitted, without prejudice, by submitting a written request for its withdrawal to the City Secretary. The bidder should follow instructions listed on the Strategic Purchasing Division's website to withdraw any bid submitted throughout the online bidding process.
4. The Official Bid Form should indicate the Unit Price for the specified item/service and the Total Price after multiplying the Estimated Quantity times the Unit Price. In case of conflict between the Unit Price and the Total Price once computed using the Estimated Quantity, the Unit Price shall control. The Unit Price shall be inclusive of all costs, insurance and freight. **Cash discounts will not be considered in the award of bids.**
5. No change in price will be considered after bids have been opened.
6. Provisions of the City's Official Bid Form, Specifications and General Terms & Conditions shall not be altered. Any erasure or alteration of figures or terms may invalidate the bid on the item which the erasure or alteration is made. Submission or attachment of company "Quotation Forms" containing alternative terms and/or conditions is not acceptable and may result in your bid being determined non-responsive.
7. Bids will not be considered in cases in which bidder quotes an item price and also an alternate price on a proposed substitute item, except in cases in which alternate bids are called for. If bidder wishes to submit more than one bid on the same item, separate Bid Forms for each bid, complete with its own original signature page, must be submitted.
8. All bids are for delivery not later than the time stated in the specifications, Prepaid, F.O.B., the point of delivery stated in the Specifications and/or Bid Form.
9. Bidders are invited to be present at the opening of bids. After opening, bids may be inspected in the City Secretary's Office, City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002.
10. If your firm chooses not to submit a bid, please complete the No Bid Sheet at the back of this bid document and forward it to the Buyer listed on the bottom of the form.
11. **Cost of Bid/Proposal Preparation:** The City shall not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

**SECTION A
OFFICIAL BID FORM**



**FUEL, TEXAS LOW EMISSION DIESEL & REFORMULATED GASOLINE
FOR VARIOUS DEPARTMENTS
BID No. SC-6-9130-024-21066**

To The Honorable Mayor
and Members of the City Council
of the City of Houston, Texas (the "City"):

The undersigned Bidder hereby offers to contract with the City upon the terms and conditions stated in that certain **"Contract for Fuel for a three (3) year term and two (2) one-year option periods for Various Departments"** which was distributed by the City together with the "Notice to Bidders" and is hereby incorporated herein by this reference (the "Contract"). This offer is made at the following prices. When issued by the City of Houston, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the bidder to ensure that it has obtained all such letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid.

The City may accept this bid offer by issuance of a Contract covering award of said bid to this Bidder at any time on or before the 180th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181st day unless the parties mutually agree to an extension of time in writing.

The City of Houston reserves the option, after bids are opened, to increase or decrease the quantities listed, subject to the availability of funds, and/or make award by line item.

If the City accepts the foregoing offer, this Bidder promises to deliver to the City Purchasing Agent of the City, five (5) original counterparts of said Contract duly executed by this Bidder (as "Contractor") in accordance with this paragraph, proof of insurance as outlined in Article VI of the Contract, all on or before the tenth (10th) day following the day this Bidder receives from the City the unsigned counterparts shall be executed so as to make it binding upon the Bidder, and all of the applicable requirements stated in the document entitled "Instructions for Execution of Contract Documents," (which was distributed by the City) shall be complied with.

The City reserves the right to accept or reject, in whole or in part, any or all bids received and to make award on the basis of individual items or combination of items, as it is deemed in the best interest of the City.

If the City accepts the foregoing offer, this Bidder shall furnish all labor, supervision, materials, supplies, equipment and tools necessary to provide fuel for the City in accordance with attached Specifications.

ESTIMATED QUANTITIES NOT GUARANTEED

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of fuel during the term of this Contract. The quantities may vary depending upon the actual needs of the user departments. The quantities specified herein are good faith estimates of usage during the term of this Contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into with third parties based on the City purchasing/requiring all the quantities specified herein.

Bidders agree to supply as ordered, Texas Low Emission Diesel Fuel, Unleaded and Premium-Unleaded Reformulated Gasoline at the bid price, plus or minus the fixed differential in excess of the following formula: The average of prices posted for No. 2-D Low Sulfur Diesel Fuel (red-dyed/Federal Tax Exempt or un-dyed) and, Unleaded and Premium-Unleaded Reformulated Gasoline as listed in the Weekly Oil Price Information Service, PADD 3 Report for Houston, Texas Rack Prices issued each Monday of each calendar week. Each Monday of the week, the prices will be calculated by adding the Contractor's differentials to the averages that were published by OPIS for the previous Thursday. Prices will be firm for one (1) week at a time. If the previous Thursday is a holiday, the formula will be based on OPIS averages from the previous Wednesday. Contractor agrees to furnish the City a copy of said report. No price increase for the firm, fixed differential is authorized for the term of this Contract.

Item No.	DESCRIPTION	FIVE YEAR ESTIMATE GALLONS	Firm Fixed Differential for Texas Low Emission Diesel/Re-Formulated Unleaded Gasoline (exclusive of Federal, State and local taxes) Indicate Plus or Minus	SUB-TOTAL
1	Texas Low Emission Diesel, per specifications in Section "B" herein	18,750,000	\$_____	\$_____
2	Unleaded Gasoline: Reformulated, per specifications in Section "B" herein	40,000,000	\$_____	\$_____
3	Premium Unleaded Gasoline: Reformulated, per specifications in Section "B" herein	500,000	\$_____	\$_____
4	Texas Low Emission Diesel, per specifications for Metro/other entities in Section "B" herein	60,000,000	\$_____	\$_____
TOTAL \$				

SPOT PURCHASE BY CITY:

The City of Houston may purchase up to 20% of the total contract quantity using the Spot Market Price.

PRICING EVALUATION:

The total estimated price per item will be determined by applying the differential bid for each item to the average price of the item in the OPIS available at the time bids are opened; multiplying the resulting price by the estimated number of gallons to arrive at the total estimated price for each item.

MARKET PRICE FORMULA:

Supplier agrees to supply and deliver, as requested, the TXLED fuel and/or unleaded gasoline at the bid price of the fixed differential in excess of the following formula: The average of prices posted for *No. 2-D Fuel, Low Sulfur (red-dyed/Federal Tax Exempt or un-dyed)* and *Unleaded Gasoline* as listed in the O.P.I.S. for Houston, Texas, Rack Prices issued each Monday of each calendar week. Each Monday of the week, the prices will be calculated by adding the supplier's differentials to the averages that were published by OPIS for the previous Thursday. Prices will be firm for one (1) week at a time. If the previous Thursday is a holiday, the formula will be based on OPIS averages from the previous Wednesday. Supplier agrees to furnish the City a copy of said report. No price increase for the excess charge is authorized for the 60-month term of this contract.

Actual price for each month shall be determined by the formula: plus or minus the price bid as the fixed differential above or below this rate.

The bid price of the fixed differential above or below O.P.I.S. shall be firm for the duration of the contract term.

CONTRACTOR'S QUESTIONNAIRE

In order to receive bid award consideration, the bidder must be able to demonstrate that they have a refinery in the Houston area and the capability of providing fuel via pipeline from a remote location 75-100 miles from Houston. Contractor must be a manufacturer of fuel and currently providing or have had at least one contract, as a prime supplier, for the fuel types and quantities specified herein. Bidder must have references that document previous experience. The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the Contractor's responsibility. Bidder must have references documenting that it has performed fuel supply services.**

Name: _____

Address: _____

City & State: _____

Name & Phone Number of Contact: _____ Years Services: _____

Name: _____

Address: _____

City & State: _____

Name & Phone Number of Contact: _____ Years Services: _____

Name: _____

Address: _____

City & State: _____

Name & Phone Number of Contact: _____ Years Services: _____

SITE INSPECTION:

"The City of Houston reserves the right to inspect the bidder's current place of business to evaluate equipment condition and capabilities, staff experience, training and capabilities, and storage capabilities as they relate to the performance of this contract.

Contractor's Facility and Inspection

The City intends to inspect the work on its equipment during the course of its repair. Therefore the bidder's /contractor's facility shall be equipped to provide the services specified and shall be staffed with qualified personnel. This requirement shall apply to all sub-contractors that will perform work related to this contract for the contractor. The facility must meet requirements at time city performs the inspection in order to be considered for award.

CONFLICT OF INTEREST QUESTIONNAIRE:

Chapter 176 of the Local Government Code requires every Vendor or Contractor with the City of Houston ("City") to file a Conflict of Interest Questionnaire with the City Secretary of the City of Houston by the **seventh** business day after:

(1) any contract discussions or negotiations begin, or

(2) submitting an application, responses to requests for proposals, bids, correspondence, or any writing related to a potential agreement with the City.

The Conflict of Interest Questionnaire is available for downloading from the Texas Ethics Commission's website at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. The completed Conflict of Interest Questionnaires will be posted on the City Secretary's website. There will also be a list of the City's Local Government Officers on the City of Houston's website.

Additionally, each Vendor or Contractor must file updated questionnaires no later than **September 1st** of each year that the Vendor or Contractor seeks to contract with the City, or the **seventh** business day after the date of an event that would render the questionnaire incomplete or inaccurate.

However, a Vendor or Contractor is not required to file a new questionnaire in any year if the vendor has completed a questionnaire between June 1st and September 1st of that year, unless the previous questionnaire is incomplete or inaccurate.

Original Conflict of Interest Questionnaire shall be filed with Houston's Records Administrator (Ms. Anna Russell, City Secretary, 900 Bagby, First Floor, Houston, Texas 77002). Vendors and Contractors shall include a copy of the form that was submitted to the City Secretary as part of the BID package. Any questions about filling out this form should be directed to your attorney

Failure of any Vendor or Contractor to comply with this law is a Class C misdemeanor.

CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE

The City of Houston Fair Campaign Ordinance makes it unlawful for a Contractor to offer any contribution to a candidate for City elective office (including elected officers and officers-elect). All respondents to this invitation to bid must comply with Houston Code of Ordinances Chapter 18 as amended relating to the contribution and solicitation of funds for election campaigns. Provisions of this ordinance are provided in part in the paragraphs that follow. Complete copies may be obtained from the office of the City Secretary.

Candidates for city office may neither solicit nor receive contributions except during a period commencing 270 calendar days prior to an election date for which a person is a candidate for such office and ending 90 calendar days after the election date, including run off elections if such candidate is on the ballot.

Further, it shall be unlawful either for any person who submits a bid or proposal to contribute or offer any contribution to a candidate or for any candidate to solicit or accept any contribution from such person for a period commencing at the time of posting of the City Council Meeting Agenda including an item for the award of the Contract and ending upon the 30th day after the award of the Contract by City Council.

For the purposes of this Ordinance, a **Contract** is defined as each Contract having a value in excess of \$30,000 that is let by the City for professional services, personal services, or other goods or services of any other nature whether the Contract is awarded on a negotiated basis, request for proposal basis, competitive proposal basis or formal sealed competitive bids. The term **Contractor** includes proprietors of proprietorships, all partners having an equity interest of 10% or more of partnerships, (including limited liability partnerships and companies), all officers and directors of corporations (including limited liability corporations), and all holders of 10% or more of the outstanding shares of corporations.

A STATEMENT DISCLOSING THE NAMES AND BUSINESS ADDRESSES EACH OF THOSE PERSONS WILL BE REQUIRED TO BE SUBMITTED WITH EACH BID OR PROPOSAL FOR A CITY CONTRACT.

Completion of the attached form entitled "**Contractor Submission List**" will satisfy this requirement. Failure to provide this information may be just cause for rejection of your bid or proposal.

FORM A
CONTRACTOR SUBMISSION LIST
CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE

The City of Houston Fair Campaign Ordinance makes it unlawful for a Contractor to offer any contribution to a candidate-for City elective office (including elected officers-elect) during a certain period of time prior to and following the award of the Contract by the City Council. The term "Contractor" Includes proprietors of proprietorships, partners or joint venturers having an equity interest of 10 percent or more for the partnership or Joint venture, and officers, directors and holders of 10 percent or more of the outstanding shares of corporations. A statement disclosing the. names and business addresses of each of those persons will be required to be submitted with each bid or proposal for a City Contract. See Chapter 18 of the Code of Ordinances, Houston, Texas, for further information.

This list is submitted under the provisions of Section 18-36(b) of the Code of Ordinances, Houston, Texas, in connection with the attached proposal, submission or bid of:

Firm or Company Name: _____

Firm or Company Address: _____

The firm/company is organized as a (Check one as applicable) and attach additional pages if needed to supply the required names and addresses:

☐ **SOLE PROPRIETORSHIP**

Name _____
Proprietor Address _____

☐ **A PARTNERSHIP**

List each partner having equity interest of 10% or more of partnership (if none state "none")

Name _____
Partner Address _____

Name _____
Partner Address _____

☐ **A CORPORATION**

LIST ALL DIRECTORS OF THE CORPORATION (IF NONE STATE "NONE")

Name _____
Director Address _____

Name _____
Director Address _____

Name _____
Director Address _____

LIST ALL OFFICERS OF THE CORPORATION (IF NONE STATE NONE")

Name _____
Officer Address

Name _____
Officer Address

Name _____
Officer Address

LIST ALL INDIVIDUALS OWNING 10% OR MORE OF OUTSTANDING SHARES OF STOCK OF THE CORPORATION (IF NONE STATE "NONE")

Name _____
Address

Name _____
Address

Name _____
Address

I certify that I am duly authorized to submit this list on behalf of the firm, that I am associated with the firm in the capacity noted below and that I have personal knowledge of the accuracy of the information provided herein.

Preparer

Printed Name

Title

Note: This list constitutes a **government record** as defined by § 37.01 of the Texas Penal Code.

8/23/01

CITY OF HOUSTON CONTRACTOR OWNERSHIP DISCLOSURE ORDINANCE:

City Council requires knowledge of the identities of the owners of entities seeking to contract with the City in order to review their indebtedness to the City prior to entering contracts. Therefore, all respondents to this invitation to bid must comply with Houston Code of Ordinances Chapter 15, as amended (Sections 15-122 through 15-126) relating to the disclosure of owners of entities bidding on, proposing for or receiving City contracts. Provisions of this ordinance are provided in part in the paragraphs that follow. Complete copies may be obtained from the office of the City Secretary.

Contracting entity means a sole proprietorship, corporation, no-profit corporation, partnership, joint venture, limited liability company, or other entity that seeks to enter into a contract requiring approval by the Council but excluding governmental entities.

A contracting entity must submit at the time of its bid or proposal, the full names and the business and residence addresses of all persons owning five percent or more of a contracting entity or, where a contracting entity is a non-profit corporation, the full names and the business and residence addresses of all officers of the non-profit corporation.

Completion of the "**Affidavit of Ownership or Control**", included herein, and submitted with the Official Bid or Proposal Form will satisfy this requirement. Failure to provide this information may be just cause for rejection of your bid or proposal.

INSTRUCTION: ENTITIES USING AN ASSUMED NAME SHOULD DISCLOSE SUCH FACT TO AVOID REJECTION OF THE AFFIDAVIT. THE FOLLOWING FORMAT IS RECOMMENDED: CORPORATE/LEGAL NAME DBA ASSUMED NAME.

STATE OF _____ §
COUNTY OF _____ § **AFFIDAVIT OF OWNERSHIP OR CONTROL**

BEFORE ME, the undersigned authority, on this day personally appeared _____ **[FULL NAME]** (hereafter "Affiant"),
 _____ **[STATE TITLE/CAPACITY WITH CONTRACTING ENTITY]** of
 _____ **[CONTRACTING ENTITY'S CORPORATE/LEGAL NAME]** ("Contracting Entity"), who being by me duly sworn on oath stated as follows:

1. Affiant is authorized to give this affidavit and has personal knowledge of the facts and matters herein stated.
2. Contracting Entity seeks to do business with the City in connection with _____ **[DESCRIBE PROJECT OR MATTER]**, which is expected to be in an amount that exceeds \$25,000.
3. The following information is submitted in connection with the proposal, submission or bid of Contracting Entity in connection with the above described project or matter.
4. Contracting Entity is organized as a business entity as noted below (check box as applicable).

FOR PROFIT ENTITY:

- ☐ SOLE PROPRIETORSHIP
☐ CORPORATION
☐ PARTNERSHIP
☐ LIMITED PARTNERSHIP
☐ JOINT VENTURE
☐ LIMITED LIABILITY COMPANY
☐ OTHER (Specify type in space below)

NON-PROFIT ENTITY:

- ☐ NON-PROFIT CORPORATION
☐ UNINCORPORATED ASSOCIATION

5. The information shown below is true and correct for the Contracting Entity and all owners of 5% or more of the Contracting Entity and, where the Contracting Entity is a non-profit entity, the required information has been shown for each officer. ***[NOTE: IN ALL CASES, USE FULL NAMES, LOCAL BUSINESS AND RESIDENCE ADDRESSES AND TELEPHONE NUMBERS. DO NOT USE POST OFFICE BOXES FOR ANY ADDRESS. INCLUSION OF E-MAIL ADDRESSES IS OPTIONAL, BUT RECOMMENDED. ATTACH ADDITIONAL SHEETS AS NEEDED.]***

Contracting Entity

Name: _____

Business Address ***[No./STREET]*** _____

[CITY/STATE/ZIP CODE] _____

Telephone Number
(____)_____

Email Address ***[OPTIONAL]*** _____

Residence Address ***[No./STREET]*** _____

[CITY/STATE/ZIP CODE] _____

Telephone Number (____)_____

Email Address ***[OPTIONAL]*** _____

5% Owner(s) (IF NONE, STATE "NONE.")

Name: _____

Business Address ***[No./STREET]*** _____

[CITY/STATE/ZIP CODE] _____

Telephone Number (____)_____

Email Address ***[OPTIONAL]*** _____

Residence Address ***[No./STREET]*** _____

[CITY/STATE/ZIP CODE] _____

Telephone Number (____)_____

Email Address ***[OPTIONAL]*** _____

6. Optional Information

Contracting Entity and/or _____ **[NAME OF OWNER OR NON-PROFIT OFFICER]** is actively protesting, challenging or appealing the accuracy and/or amount of taxes levied against _____ **[CONTRACTING ENTITY, OWNER OR NON-PROFIT OFFICER]** as follows:

Name of Debtor: _____
 Tax Account Nos. _____
 Case or File Nos. _____
 Attorney/Agent Name _____
 Attorney/Agent Phone No. (_____) _____
 Tax Years _____

Status of Appeal **[DESCRIBE]**

Affiant certifies that he or she is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein, and that the information provided herein is true and correct to the best of Affiant's knowledge and belief.

 Affiant

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20_____.

(Seal)

 Notary Public

NOTE:

This affidavit constitutes a government record as defined by Section 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in Section 37.10 of the Texas Penal Code. Attach additional pages if needed to supply the required names and addresses.

FUEL, TEXAS LOW EMISSION DIESEL & REFORMULATED GASOLINE

OFFICIAL SIGNATURE PAGE

The respondent warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, the City shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract prices or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

The undersigned hereby offers to furnish and deliver the goods and/or services as specified at the prices and terms herein stated and in accordance with the Invitation to Bid, Clarification Letters, and General Conditions of Bidding, all of which are made a part of this offer.

All pages of the City of Houston's bid document, including but not limited to the General Terms & Conditions and page 3 (three) of this bid invitation are incorporated by reference into this bid for all purposes.

The undersigned, as bidder, certifies that the only person or parties interested in this proposal as principals are those named herein; that the bidder has not, either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the award of this contract.

THIS BIDDER IS AND REPRESENTS THAT IT IS AN EQUAL OPPORTUNITY EMPLOYER.

NOTE: BID MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE BIDDER, WHICH MUST BE THE ACTUAL LEGAL ENTITY THAT WILL PERFORM THE CONTRACT IF AWARDED.

**SUBMIT YOUR BID IN DUPLICATE
BID MUST BE MANUALLY SIGNED IN INK
(BLUE INK PREFERRED)**

Respectfully Submitted:

**Bidder: _____
(Print or type name of Bidder-Full Company Name)**

Vendor Number: _____

Federal Identification Number: _____

**By: _____
(Signature of Authorized Officer or Agent)**

Name: _____

Title: _____

Date: _____

Address (Street or P. O. Box)

City-State-Zip Code

Telephone Number: (_____) _____

FAX Number: (_____) _____

A DEPOSIT IS NOT REQUIRED WITH THIS BID

**Attachments: Statement of Residency
 Insurance Requirements/Sample**

(Please submit in duplicate with your Bid Form)

Every bidder must affirmatively state its principal place of business in its response to a bid invitation. Failure to provide the required information may constitute a basis for rejection of your bid. Bidders' cooperation in this regard will avoid costly time delays in the award of bids by the **City of Houston**.

For this reason, each bidder is encouraged to complete and return in duplicate, with its bid, the **Statement of Residency Form**, but in any event the low bidder will be required to submit this information within five (5) calendar days after the date of receipt of notification of apparent low bidder status from the **Purchasing Section of the Finance and Administration Department**. Failure to provide all required information within this designated period may result in the apparent low bidder being considered non-responsive and non-responsible, and the second low bidder being considered for award.

TEX. GOV'T CODE , §2252.001, §(4) defines a "**Resident bidder**" as a bidder whose principal place of business* is in this state, and includes a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Bidder's complete company name:

Principal Place of Business in Texas means, for any type of business entity recognized in the **State of Texas**, that the business entity:

- Form prepared by: _____
- (Name)** **(Title)**

Date: _____

CERTIFICATE OF INSURANCE EXPLANATIONS

1. Certificate must not be more than 30 days old.
2. Name and Address of Producer writing coverage.
3. Name of each insurance company providing coverage (as listed in Best's Key Rating Guide or on company's Certificate of Authority on file with Texas Department of Insurance). Each company must have (1) a Certificate of Authority to transact insurance business in Texas or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of B+ or better and a Best's financial size category of class VI or better according to the most current edition Best's Key Rating Guide.
4. Name and address of Insured (as shown on policy)
5. Letter in the column must reference the insurer of the policy being described
6. Must be a policy number; no binders will be accepted
7. Date policy became effective
8. Expiration date must be at least **60** days from date of delivery of certificate
9. Name and file number of project
10. Name of project manager
11. Signature or facsimile signature of authorized representative of Producer (blue ink preferred)
12. All required endorsements must accompany the certificate.

ACCORD. CERTIFICATE OF INSURANCE

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY. ISSUERS OF POLICIES. THE ISSUER MUST HAVE A RATING OF AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE AT LEAST B+ AND FINANCIAL SIZE OF CLASS VI OR BETTER COVERAGE AFFORDED BY THE POLICIES BELOW

ACCORDING TO THE CURRENT YEAR'S BEST RATING OR
A CERTIFICATE OF AUTHORITY TO CONDUCT INSURANCE
BUSINESS IN THE STATE OF TEXAS
IN **COMPANIES AFFORDING COVERAGE**

COMPANY A

COMPANY B

COMPANY C

INSURED: SAMPLE FORM

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR.	TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	POLICY LIMITS
	General Liability				General Aggregate \$1,000,000
A.	(X) Commercial General Liability				Products-Comp/Op Agg. \$1,000,000
	Claims Made () Occur.				Personal & Adv. Injury \$1,000,000
	Owners & Contractors Prot.				Each Occurrence \$ 500,000
					Fire Damage (Any one fire) \$ 50,000
					Med. Expense \$ 5,000
					(Any one person)
	Automobile Liability				Combined Single Limit \$1,000,000
A.	(X) Any Auto	Auto Liability Insurance for autos furnished or used in the course of performance of this Contract.			Bodily Injury (Per person) \$
	All Owned Autos	Including Owned, Non-owned, and Hired Auto coverage. (Any Auto coverage may be substituted for Owned, Non-owned and Hired Auto coverage.)			Bodily Injury (Per Accident) \$
	(X) Hired Autos	If no autos are owned by Contractor, coverage may			Property Damage \$
	(X) Non-Owned Autos	Garage Liability be limited to Non-owned and Hired Autos. If Owned Auto coverage cannot be purchased by Contractor, Scheduled Auto coverage may be substituted for Owned Auto coverage. EACH AUTO USED IN PERFORMANCE OF THIS CONTRACT MUST BE COVERED IN THE LIMITS SPECIFIED.			
	Excess Liability				Each Occurrence \$
	Umbrella Form				Aggregate \$
	Other than Umbrella Form				
	Worker's Compensation and Employers Liability			(X) Statutory Limits	Each Accident \$ 100,000
				Statutory Limits	Disease - Policy Limit \$ 100,000
					Disease - Each Employee \$ 100,000
	Other				

DESCRIPTION OF OPERATION/LOCATIONS/VEHICLES/SPECIAL ITEMS

City of Houston is named as additional insured on Auto, General Liability and Umbrella policies, and Waiver of Subrogation on Auto, General Liability, Worker's Compensation and Umbrella. Material alteration on cancellation notice as shown below. **For (Project Name).**

CERTIFICATE HOLDER

CANCELLATION

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED
 BEFORE THE EXPIRATION DATE THEREOF. THE ISSUING COMPANY WILL
 MAIL THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER
 NAMED TO THE LEFT.

CITY OF HOUSTON / FINANCE AND ADMINISTRATION
DEPARTMENT – STRATEGIC PURCHASING DIVISION
901 Bagby, Room B405
HOUSTON, TEXAS 77002

AUTHORIZED REPRESENTATIVE

SECTION B

TECHNICAL SPECIFICATIONS FOR TEXAS LOW EMISSION DIESEL FUEL & REFORMULATED UNLEADED GASOLINE

1.0 General

- 1.1 **The Contractor shall have a refinery in the Houston area and the capability of providing the specified fuel, via pipeline from a remote location 75-100 miles from Houston.**
- 1.2 The estimated quantity stated for each Line Item is an estimate only.
- 1.3 The City reserves the right to issue a subsequent purchase order(s), for use by other state agency (ies) and political subdivisions for additional quantities. Any additional delivery location(s) will be in close proximity to those originally listed on the purchase order. Once a subsequent purchase order has been issued by the City, any administration and maintenance, including renewal of the subsequent purchase order(s), shall be the total responsibility of the participating agency involved and will not be assumed or managed by the City. Any changes, including purchase order renewal made to a subsequent purchase order(s), shall have no effect on the purchase order originally issued, pertaining to the City.

2.0 Pricing Formula

- 2.1 Contractor agrees to supply Texas Low Emission Diesel Fuel and Re-Formulated Unleaded Gasoline, at the bid price of the fixed price differential in excess of the following formula: The average of prices posted for No. 2-D Fuel, Low Sulfur (red-dyed/Federal Tax Exempt or un-dyed) and Unleaded Gasoline as listed in the OPIS for Houston, Texas Rack Prices issued each Monday of each calendar week. Each Monday of the week, the prices will be calculated by adding the Contract's differentials to the averages that were published by OPIS for the previous Thursday. Prices will be firm for one (1) week at a time. If the previous Thursday is a holiday, the formula will be based on OPIS averages from the previous Wednesday. Contractor agrees to furnish the City a copy of said report. No price increase is authorized for the term of this contract.
- 2.2 Actual price for each week shall be determined by the formula: plus or minus the price bid as the fixed differential above or below this rate.
- 2.3 **The City of Houston may purchase up to 20% of the total estimated contract quantity at the SPOT Market price if the SPOT pricing is more favorable than the OPIS formula contract price.**

3.0 TYPICAL ANALYSIS SHEET(S) and PRODUCT QUALITY:

A typical analysis sheet(s), based on actual test results showing the properties of the diesel fuel and re-formulated unleaded gasoline must accompany each bid. (All properties listed in Section B, Technical Specifications, Provision B, Paragraph 1, entitled "Diesel Fuel Properties" and "Re-formulated Unleaded Gasoline" shall be on the typical analysis sheet submitted with the bid). The typical analysis sheet(s) must be on the refinery company's letterhead and must identify the brand name (when applicable) of the diesel fuel product and each of the types of motor gasoline proposed.

TECHNICAL SPECIFICATIONS: CONTINUED

4.0 CONTAMINATED MATERIALS:

- 4.1 Fuel supplied under this agreement shall be free of contamination.
- 4.2 Contamination is defined as any element, which enters pure refined diesel fuel either naturally or by purposeful action, which is not a product of refined crude oil with the exception of winter additives, detergents, and identifying dyes. No contaminant shall be contained in the fuel.
- 4.3 The City of Houston and/or its authorized representative(s) reserves the right to test fuel(s) quality before, during and after unloading. Should test results show that the fuel(s) contains contamination; the fuel(s) will be rejected.
- 4.4 If any contaminant or heavy metal product is found to be in the fuel, it will be the responsibility of the Contractor to remove and replace the contaminated product at the Contractor's expense and at no cost to the City. The removal and replacement of the fuel(s) from the City of Houston property shall take place within three working days after requested to do so.. The supplier shall also be responsible for all cleanups to all City of Houston property, storage facilities, and equipment as a result of noncompliance with specifications. Furthermore, the supplier shall be fully responsible for any and all costs incurred by the City of Houston for any equipment sustaining damage, which is attributed to contaminated fuel(s), which the supplier supplies.
- 4.5 The City has the option to contract the removal of any contaminated material and charge back the Contractor any and all costs involved.
- 4.6 Any aftermarket additive used shall be identified by brand and/or trade name. The manufacturer's additive specifications shall be provided to the City of Houston upon request. Failure to provide the manufacturer's additive specifications within seven working days of the City of Houston's request will be grounds for this agreement cancellation without further cause. An additive, if used, shall comply with the Environmental Protection Agency (EPA) regulations, and shall be compatible with the refiner's products. Additives, which increase emissions of sulfur and other substances proven to damage the environment, which are disallowed by EPA regulations will not be accepted.

5.0 PRODUCT SUBSTITUTION:

- 5.1 **The Texas Low Emission Diesel fuel supplied to the City of Houston must meet the requirements of the Texas Administrative Code (TAC) title 30, Chapter 114, Subchapter H., Division 2, Sections 114.312 – 114.319.**
- 5.2 Alternate formulation meeting the TAC requirements may be acceptable, if written approval by the Texas Commission on Environmental Quality (TCEQ) for the alternate is furnished.
- 5.3 All bidders are required to submit with their bid a Material Safety Data Sheet (OSHA Form 174), manufacturer's safety data sheet, or such other sheets that contain the same information as the OSHA Form 174. If the Supplier receives written approval to supply diesel fuel and unleaded gasoline other than specified from the Purchasing Agent in writing, the Supplier must supply a copy of the Material Safety Data Sheet for the approved diesel fuel and unleaded gasoline to Finance & Administration Department, Fleet Management Section.
- 5.4 Each sheet submitted should be identified by the bidder's complete company name, formal bid number and bid form item number.

6.0 QUALITY ASSURANCE & TESTING:

- 6.1 The diesel fuel and/or unleaded gasoline shall meet or exceed the minimum quality standards specified in Section B, Technical Specifications.
- 6.2 The City shall have the right upon delivery of the diesel fuel and/or unleaded gasoline, or at any other time, to determine compliance with such standards by performing tests in accordance with the methods prescribed by the American Society for Testing Materials (ASTM). If the Contractor questions or disputes the result of tests made by the City, the City shall have the right to appoint a chemist, who is also

acceptable to the Contractor, to make the required tests. The expense of such tests shall be paid by the Contractor if it is determined that the diesel fuel and/or unleaded gasoline failed to satisfy the quality standards set forth herein; and by the City if it is deemed that the diesel fuel and/or unleaded gasoline satisfied such quality standards. The decisions of the chemist shall be final and binding on both parties.

- 6.3 If the diesel fuel and/or unleaded gasoline so tested does not comply with the specifications, the Contractor will be required to remove said diesel fuel and/or unleaded gasoline within twenty-four (24) hours after notification and replace it with a suitable product. Also, the Contractor will bear the cost of all incidental and consequential damages that may occur from the defective fuel or gasoline. This shall include the cost of the second test when the first test revealed the defective fuel or gasoline.

7.0 DIESEL FUEL PROPERTIES:

- 7.1 To be a fuel oil suitable for use in diesel internal combustion engines in trucks, tractors, dozers, cranes, graders, shovels, and similar equipment and shall comply with Section 211 (i) (1) of the Clean Air Act Amendments of 1990, effective October 1, 1993.
- 7.2 The TXLED shall meet the requirements of the Texas Administrative Code (TAC) Title 30, Chapter 114, Subchapter H, Division 2, Sections 114.312 – 114.319.
- 7.3 Alternative formulation meeting the TAC requirements may be acceptable, if written approval by the Texas Commission on Environmental Quality (TCEQ) for the alternate is furnished.
- 7.4 Water-based emulsified diesel fuel is not acceptable.

TECHNICAL SPECIFICATIONS: CONTINUED

REFORMULATED GASOLINE

8.0 **APPROVED GUM INHIBITORS AND METAL DEACTIVATORS FOR REFORMULATED GASOLINE:** This product may, but is not required to, contain the following:

- 8.1 N, N'di-secondary butyl para-phenylenedimine
- 8.2 N, N'disalicylidene-1, 2 propanediamine
- 8.3 2, 6-di-tertiary butyl 4 methyl phenol
- 8.4 N, N'di (1-ethyl-2-methylpentyl) para-phenylenediamine
- 8.5 N, N'di-isopropyl-para-phenylenediamine
- 8.6 N, N'bis-(1, 4-diamethylpentyl)-p-phenylenediamine
- 8.7 N-Butyl para-aminophenol
- 8.8 2,4,6 - tritertiary butylphenol
- 8.9 Ortho-tertiary butylphenol
- 8.10 2,4-diamethyl-6-tertiary-butylphenol
- 8.11 3,4-di-tertiary butylphenol
- 8.12 N, secondary butyl, N' phenyl-para-phenylenediamine
- 8.13 Butylated ethyl, methyl and dimethyl phenols
- 8.14 Mixed propylated and butylated phenols
- 8.15 2,4,6 tri-isopropylphenol

9.0 **SEASONAL GASOLINE DISTILLATION AND VOLATILITY CLASSES**

<u>Southern Grade Gasolines</u>	<u>Class</u>
Jan., Feb., Mar., Nov., Dec.	D
April, May, June, July	C
Sept., Oct	C
August	B

TECHNICAL SPECIFICATIONS: CONTINUED

10.0 **THIS SCHEDULE DENOTES THE VOLATILITY PROPERTIES OF THE GASOLINE AT THE TIME AND PLACE OF USE:**

10.1 **Distillation: ASTM D86**

	<u>B</u>	<u>C</u>	<u>D</u>
10% evap. oF (oC) max.	149 (65)	140 (60)	131 (55)
50% evap. oF (oC) min.	170 (77)	170 (77)	170 (77)
50% evap. oF (oC) max.	245 (118)	240 (116)	235 (113)
90% evap. oF (oC) max.	374 (190)	365 (185)	365 (185)
End Point, oF (oC) max.	430 (221)	430 (221)	430 (221)

10.2 Reid Vapor Pressure D323: psi (kPa) 10 (69) 11.5 (79) 13.5 (93)

10.3 V/L @ 20: Min. Temp. oF (oC) D2533 133 (56) 124 (51) 116 (47)

10.4 As an alternative, the temperature (oF) at a vapor/liquid ratio of 20:1 may be calculated by the following equation:

$$T_{V/L} @ 20 = 114.6 + 4.1 (RVP) + 0.20 T_{10} + 0.17 T_{50}$$

Where:

$T_{V/L} @ 20$	-	the temperature at a V/L of 20:1
RVP	-	the Reid Vapor Pressure
T_{10}	-	distillation temperature at 10% evaporated
T_{50}	-	distillation temperature at 50% evaporated

However, ASTM D2533 shall be the referee V/L method when calculated values are questionable.

11.0 **Port Fuel Injector (PFI) Detergent Additives**

All reformulated unleaded gasoline shall be supplied with a port fuel injector additive. The inclusion of the additive shall be certified for each shipment of reformulated unleaded gasoline, both regular and premium.

12.0 **Specification For Fungible 87 Octane Index Unleaded Gasoline:**

PRODUCT PROPERTY	ASTM TEST METHOD	TEST RESULTS		
		MINIMUM	MAXIMUM	NOTE
Gravity °API at 60oF	D287 or D1298	Report		
Color		4		
Corrosion 3 hrs @ 122 °F (50°C)	D130	1		
Gum mg/100 ml after washing	D381	4		
Lead Content - gm/gal at origin	D3237 or equivalent	0.01		
Doctor test	D235	Negative	5	
or: Mercaptan Sulfur, wt. %	D3227	0.002		
Sulfur, wt. %	D1266 or equivalent	0.10		
Phosphorus, gms/gal	D3231	0.004		
Oxidation stability-minutes	D525	360		
Octane RON	D2699	Report		
MON	D2700	82.0		
$\frac{R + M}{2}$		87.0		
		Report	6	

Gum inhibitors and metal deactivators. Refer to Page 1 of 6. Volatility and distillation - Refer to attached Chart Page 2 of 6.

TECHNICAL SPECIFICATIONS: CONTINUED

13.0 NOTES:

- 13.1 Reserved
- 13.2 Reserved
- 13.3 No additives or corrosion inhibitors containing phosphorus may be used in this gasoline.
- 13.4 This product may, but is not required to, contain yellow dye. No other artificial color is acceptable.
- 13.5 Mercaptan Sulfur waived if fuel is negative by Doctor test.

Non-hydrocarbon blending components are to be reported on the certified laboratory report by type and percent (by volume). This product may, but is not required to, contain Methyl Tertiary Butyl Ether (MTBE) and/or Tertiary Amyl Methyl Ether (TAME). The use of any other non-hydrocarbons as blending components is prohibited.

14.0 Specification For Fungible Minimum 92 Octane Index Unleaded Gasoline:

PRODUCT PROPERTY	METHOD	ASTM TEST	TEST RESULTS	
		MINIMUM	MAXIMUM	NOTE
Gravity	oAPI at 60oF	D287 or D1298	Report	
Color	Undyed			
Corrosion 3 hrs @ 122 °F (50oC)	D130		1	
Gum mg/100 ml after washing	D381		4	
Lead Content - gm/gal at origin	D3237 or equivalent		0.01	
Doctor test	D235		Negative	4
or: Mercaptan Sulfur, wt. %	D3227		0.002	
Sulfur, wt. %	D1266 or equivalent		0.10	
Phosphorus, gms/gal	D3231		0.004	
Oxidation stability-minutes	D525		360	
Octane RON	D2699		Report	
MON	D2700		Report	
<u>R + M</u>	91.0			
2				
Oxygenates			Report	5

Gum inhibitors and metal deactivators. Refer to Page 1 of 6. Volatility and distillation - Refer to attached Chart Page 2 of 6.

15.0 NOTES:

- 15.1 Reserved
- 15.2 Reserved
- 15.3 No additives or corrosion inhibitors containing phosphorus may be used in this gasoline.
- 15.4 Mercaptan Sulfur waived if fuel is negative by Doctor test.
- 15.5 Non-hydrocarbon blending components are to be reported on the certified laboratory report by type and percent (by volume). This product may, but is not required to, contain Methyl Tertiary Butyl Ether (MTBE) and/or Tertiary Amyl Methyl Ether (TAME). The use of any other non-hydrocarbons as blending components is prohibited.
- 15.6 This product may, but is not required to contain red dye. No other artificial color is acceptable.

TECHNICAL SPECIFICATIONS: CONTINUED

16.0 Reformulated gasoline fuel certification must comply with one of the following standards as specified:

16.1	SIMPLE MODEL PER-GALLON STANDARDS	
	Reid vapor pressure (in pounds per square inch):	
	Gasoline designated for VOC-Control Region 1	≤ 7.2
	Oxygen content (percent by weight)	≥ 2.0
	Toxic air pollutants emissions reduction (percent)	≥ 15.0
	Benzene (percent, by volume)	≤ 1.00
16.2	SIMPLE MODEL AVERAGED STANDARDS	
	Reid vapor pressure (in pounds per square inch):	
	Gasoline designated for VOC-Control Region 1	
	Standard	≤ 7.1
	Per gallon maximum	≤ 7.4
	Oxygen content (percent by weight)	
	Standard	≥ 2.1
	Per gallon maximum	≥ 1.5
	Toxic air pollutants emissions reduction (percent)	≥ 16.5
	Benzene (percent, by volume)	
	Standard	≤ 0.95
	Per gallon maximum	≤ 1.30
16.3	PHASE I - COMPLEX MODEL PER-GALLON STANDARDS	
	VOC emissions performance reduction (percent):	
	Gasoline designated for VOC-Control Region 1	≥ 35.1
	Toxic air pollutants emissions reduction (percent)	≥ 15.0
	NOx emissions performance reduction (percent)	≥ 0.0
	Oxygen content (percent by weight)	≥ 2.0
	Benzene (percent, by volume)	≤ 1.00
16.4	PHASE I - COMPLEX MODEL AVERAGED STANDARDS	
	VOC emissions performance reduction (percent):	
	Gasoline designated for VOC-Control Region 1	
	Standard	≥ 36.6
	Per gallon minimum	≤ 32.6
	Toxic air pollutants emissions reduction (percent)	≥ 16.5
	NOx emissions performance reduction (percent)	
	Standard	≥ 1.5
	Per gallon minimum	≤ 2.5
	Oxygen content (percent by weight)	
	Standard	≥ 2.1
	Per gallon minimum	≥ 1.5
	Benzene (percent, by volume)	
	Standard	≤ 0.95
	Per gallon minimum	≤ 1.30

TECHNICAL SPECIFICATIONS: CONTINUED

16.0 Reformulated gasoline fuel certification must comply with one of the following standards as specified: **Continued**

Oxygen maximum standard per-gallon which applies to reformulated gasoline fuel subject to the simple model per gallon or average standards designated as VOC-controlled (percent by weight) 2.7

17.0 ALTERNATE BIDS AND SAMPLES:

Bids for alternate products will be received and evaluated in accordance with the evaluation criteria contained in this solicitation. Bidders may bid on the gasoline only, the gasoline and alternate products, or on the alternate product only.

Any alternate product offered shall be supported with the following:

- Technical data that fully explains the product.

- Certified test data.

- A statement concerning the alternate product's ability to mix with gasoline.

- Additives required by fuel-injected engines.

- Location and production capacity of manufacturing facility.

- Mode of transport to Houston.

- Description of storage facility, including location in Houston.

- Additional information required by the City to evaluate the bid for the alternate product.

It is required that prices for any alternate product be determined monthly in accordance with the pricing formula for the items of gasoline contained in the solicitation. If requested by the City, the Bidder will be required to furnish samples of any alternate product required for test and evaluation in a laboratory and in the field.

18.0 Additions & Deletions:

The City, by written notice from the City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefor will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

19.0 ESTIMATED QUANTITIES NOT GUARANTEED

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity and type of fuel during the term of this contract. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing/requiring all the quantities specified herein.

**SECTION C
GENERAL TERMS & CONDITIONS**

THE STATE OF TEXAS

BID # _____

ORDINANCE # _____

COUNTY OF HARRIS .

CONTRACT # _____

I. PARTIES

A. Address

THIS AGREEMENT FOR _____ ("Agreement") is made on the
Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and
_____ ("Contractor or Vendor"), a corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are
as follows:

City

City Purchasing Agent for Director
of _____ Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Phone: _____
Fax: _____

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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- F. DRUG POLICY COMPLIANCE DECLARATION
- G. FEES AND COSTS

C. Parts Incorporated

The above described sections and exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections or exhibits arises the Exhibits control over the Sections.

E. Definitions

Certain terms used in this Agreement are defined in Exhibit "A".

F. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation): _____

WITNESS (if not a corporation):

By:_____

Name:

Title:

By:_____

Name:

Title:

Federal Tax ID Number: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

City Purchasing Agent

City Controller

DATE COUNTERSIGNED:

Date

Legal Assistant

This Contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

II. DUTIES OF CONTRACTOR

A. Scope of work/Specifications

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to provide the types of fuel described/specified in Exhibit "B."

B. RELEASE

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

C. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTA TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT**

NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

- (3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

D. INDEMNIFICATION PROCEDURES

- (1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
- (a) a description of the indemnification event in reasonable detail,
 - (b) the basis on which indemnification may be due, and the anticipated amount of the indemnified loss.

This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

- (2) Defense of Claims

- (a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City

as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

- (b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

E. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:

\$500,000 per occurrence; \$1,000,000 aggregate

- (2) Workers' Compensation including Broad Form All States endorsement:

Statutory amount

- (3) Automobile Liability insurance

\$1,000,000 combined single limit per occurrence

Defense costs are excluded from the face amount of the policy.

Aggregate Limits are per 12-month policy period unless otherwise indicated.

(4) Employer's Liability

Bodily injury by accident \$100,000 (each accident)

Bodily injury by disease \$100,000 (policy limit)

Bodily injury by disease \$100,000 (each employee)

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled, materially changed, or non-renewed. Within the 30-day period, Contractor shall provide other suitable policies in lieu of those about to be canceled so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

F. Warranties

Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

With respect to any parts and goods furnished by it, Contractor warrants:

- (1) that all items are free of defects in title, material, and workmanship,
- (2) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
- (3) that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- (4) that no item or its use infringes any patent, copyright, or proprietary right.

G. Licenses and Permits

Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

H. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

I. MWBE Compliance

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **zero percent (0%)** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

J. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit

"D," together with a written designation of all safety impact positions and,

- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "E."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

K. Environmental Laws

Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations (Environmental Laws). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City

Property in violation of the Environmental Laws.

L. Contractor's Performance

Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

M. Payment of Employees and Subcontractors

Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.

Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.

Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

III. DUTIES OF CITY

A. Payment Terms

The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit H for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

B. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

C. Method of Payment

The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

D. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

E. Limit of Appropriation

- (1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$_____ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and where appropriated, approved by motion, or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Agreement, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Director)

Director

- (4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

F. Changes

- (1) At any time during the Agreement Term, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- (2) The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of Notice]

SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of City Purchasing Agent or Director upon written notice to the City Purchasing Agent]

- (3) The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may issue more than one Change Order, subject to the following limitations:
 - (a) Council expressly authorizes the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, to approve a Change Order of up to \$25,000. A Change Order of more than \$25,000 over the approved contract amount must be approved by the City Council.
 - (b) If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 - (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- (4) Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.
- (5) A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- (6) Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and expires three (3) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

B. Notice to Proceed

Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

C. Renewals

If sufficient funds are allocated, the City Purchasing Agent, at his or her sole discretion, may make a request to Contractor to renew this Agreement for up to two additional 1-year option periods, upon at least 30 days' written notice before expiration of the initial term, or first option period, as applicable. Any renewal, pursuant to this Section, shall be upon the same terms and conditions of the Agreement.

D. Time Extensions

If Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

E. Termination for Convenience by the City

The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as

prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

F. Termination for Cause by City

If Contractor defaults under this Agreement, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If a default occurs, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director upon written notice to the City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the City Purchasing Agent or Director upon written notice to the City Purchasing

Agent must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

G. Termination for Cause by Contractor

Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.

The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

H. Removal of Contractor Owned Equipment and Materials

Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

A. Independent Contractor

Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
2. This relief is not applicable unless the affected party does the following:
 - (a) uses due diligence to remove the Force Majeure as quickly as possible; and
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect.
3. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
4. If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may terminate this Agreement by giving 30 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

H. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than

that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

I. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

J. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

K. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

L. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

M. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

N. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph.

This Agreement does not create any personal liability on the part of any officer or agent of the City.

O. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's prior written consent.

P. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

Q. Contractor Debt

If Contractor, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, she shall immediately notify contractor in writing. If Contractor does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor under this agreement, and Contractor waives any recourse therefor.

EXHIBIT "A"

DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Contractor Administrator" means the representative of the Finance & Administration Department who is responsible for the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" means the Directors of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article IIK (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

EXHIBIT “B”
Scope of Work/Specifications

(TO BE INSERTED BY THE CITY)

EXHIBIT "C"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"
DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of _____

(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date _____

Contractor Name _____

Signature _____

Title _____

EXHIBIT "E"
Contractor's Certification Of No Safety Impact Positions
In Performance Of A City Contract

I, _____
(Name)(Print/Type) **(Title)**

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

Date

Contractor Name

Signature

Title

CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES
FOR CONTRACTORS

I, _____ as an
(NAME) **(PRINT/TYPE)**

owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

DATE

CONTRACTOR NAME

SIGNATURE

TITLE

EXHIBIT "F"
DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor or Vendor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20____.

Initials A written Drug Free Workplace Policy has been implemented and employees notified.
The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

Initials From _____ to _____ the following test has occurred
(Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

Initials Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "G"

FEES AND COSTS

NO BID SHEET FOR
FUEL
FOR VARIOUS DEPARTMENTS

BID No. SC-6-9130-024-21066

If your firm has chosen not to submit a bid for this procurement, please complete this form and submit to:

City of Houston,
Strategic Purchasing Division
901 Bagby, Room B405
Houston, Texas 77002

Due on or before the bid due date

Please check the items that apply:

- ☐ Do not sell the item(s) required.
- ☐ Cannot be competitive.
- ☐ Cannot meet the Specifications highlighted in the attached Bid.
- ☐ Cannot provide Insurance required.
- ☐ Cannot provide Bonding required.
- ☐ Cannot comply with Indemnification requirements.
- ☐ Job too large.
- ☐ Job too small.
- ☐ Do not wish to do business with the City.
- ☐ Other reason.
-
-

Company Name: _____
(Print or Type Name of Company)

By: _____
(Signature of Authorized Officer or Agent)

Vendor Number: _____

Telephone Number: (____) _____

FAX Number: (____) _____

RETURN TO: _____

Finance & Administration Dept.
Strategic Purchasing Division
901 Bagby, Room B405
Houston, Texas 77002

FAX NUMBER: 713-247-2136